Ethics - A Year in Turmoil

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Oath of Office
“Defending the Constitution”

I do solemnly swear/affirm that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office upon which I am about to enter.”

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- Strive for a TOTAL ethical life.
- Can’t LEGISLATE ethics.
- No change in ethics for the purpose of the contingency or mission requirements.
- Turmoil does not change the underlying ethical responsibility.

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Topics of Interest:

- Druyun Case
- Use of Government Resources
- Contractors in the Workplace
- Private Organizations

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- The Principles of Ethical Conduct 5 CFR § 2635.101(b)

Criminal Statutes

- 18 U.S.C. 207 Post Employment Restrictions
- 18 U.S.C. 208 Conflict of Interests
- 41 U.S.C. 423 Procurement Integrity

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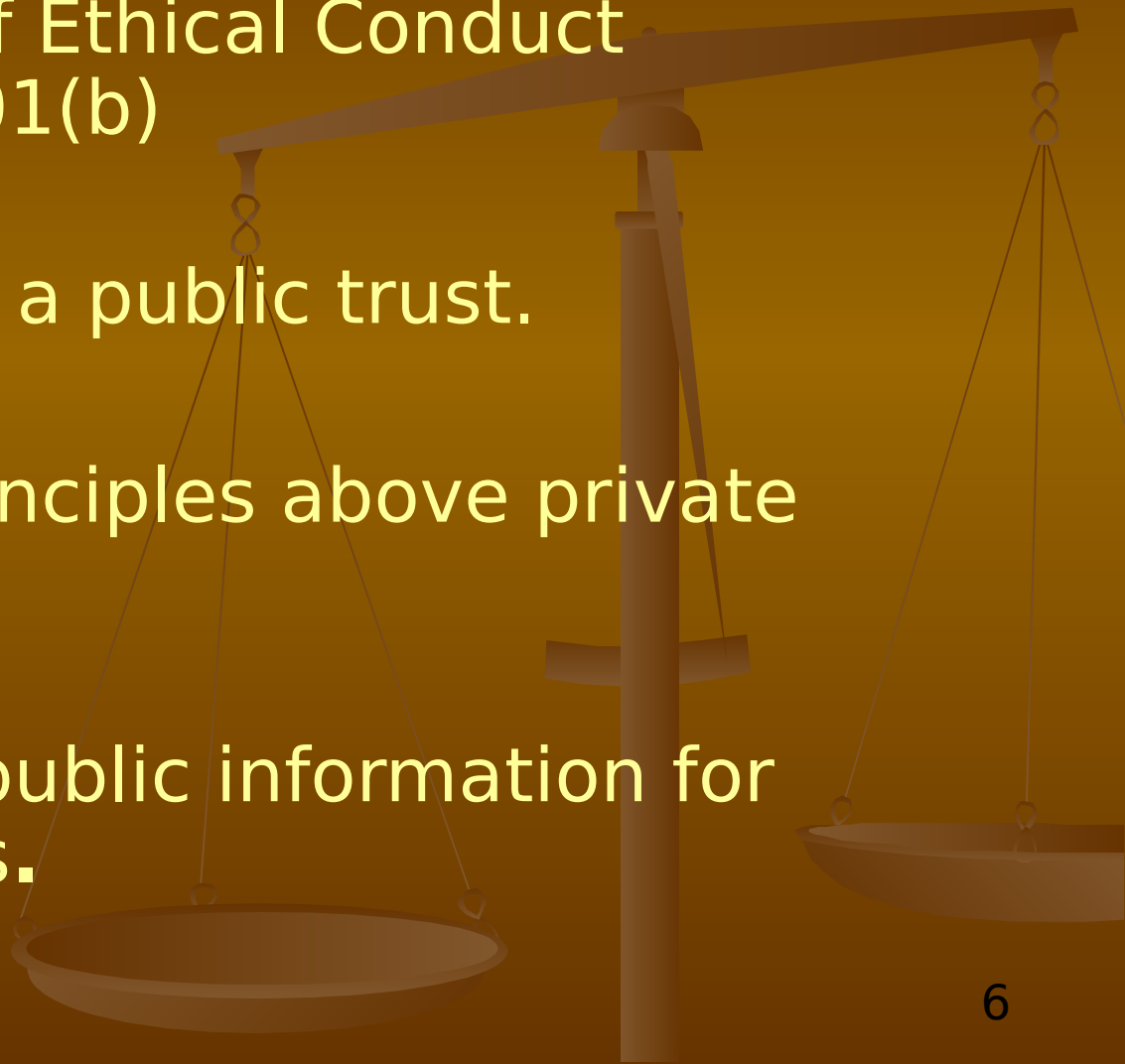
The Principles of Ethical Conduct
5 CFR § 2635.101(b)

- Public service is a public trust.
- Place ethical principles above private gain.
- Do not use nonpublic information for private interests.



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The Principles of Ethical Conduct
5 CFR § 2635.101(b)

- Act without preferential treatment toward any private organization or individual.
- Protect and conserve government property and use only for authorized activities.
- Avoid actions creating an appearance of violating ethical standards.

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18 U.S.C. 207 (a) (1)

- An officer of employee of executive branch of United States, after termination of service or employment knowingly make, with the intent to influence, any communication to or appearance before any officer or employee any department/ agency on behalf of any other person in connection with a particular matter

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18 U.S.C. 207 (a) (1)

In which:

- the United States or District of Columbia is a party or has a direct and substantial interest,
- the person participated personally and substantially as such officer or employee,
- involved a specific party or specific parties.

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18 U.S.C. 207 (a) (2)

- Any person who within 2 years after termination of service or employment with the United States or District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department/agency on behalf of any other person in connection with a particular matter

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18 U.S.C. 207 (a) (2)

In which:

- the United States or District of Columbia is a party or has a direct and substantial interest,
- Which such person knows or reasonably should know was actually pending under his/her official responsibility within 1 year before termination of service or employment,
- involving a specific party or specific parties

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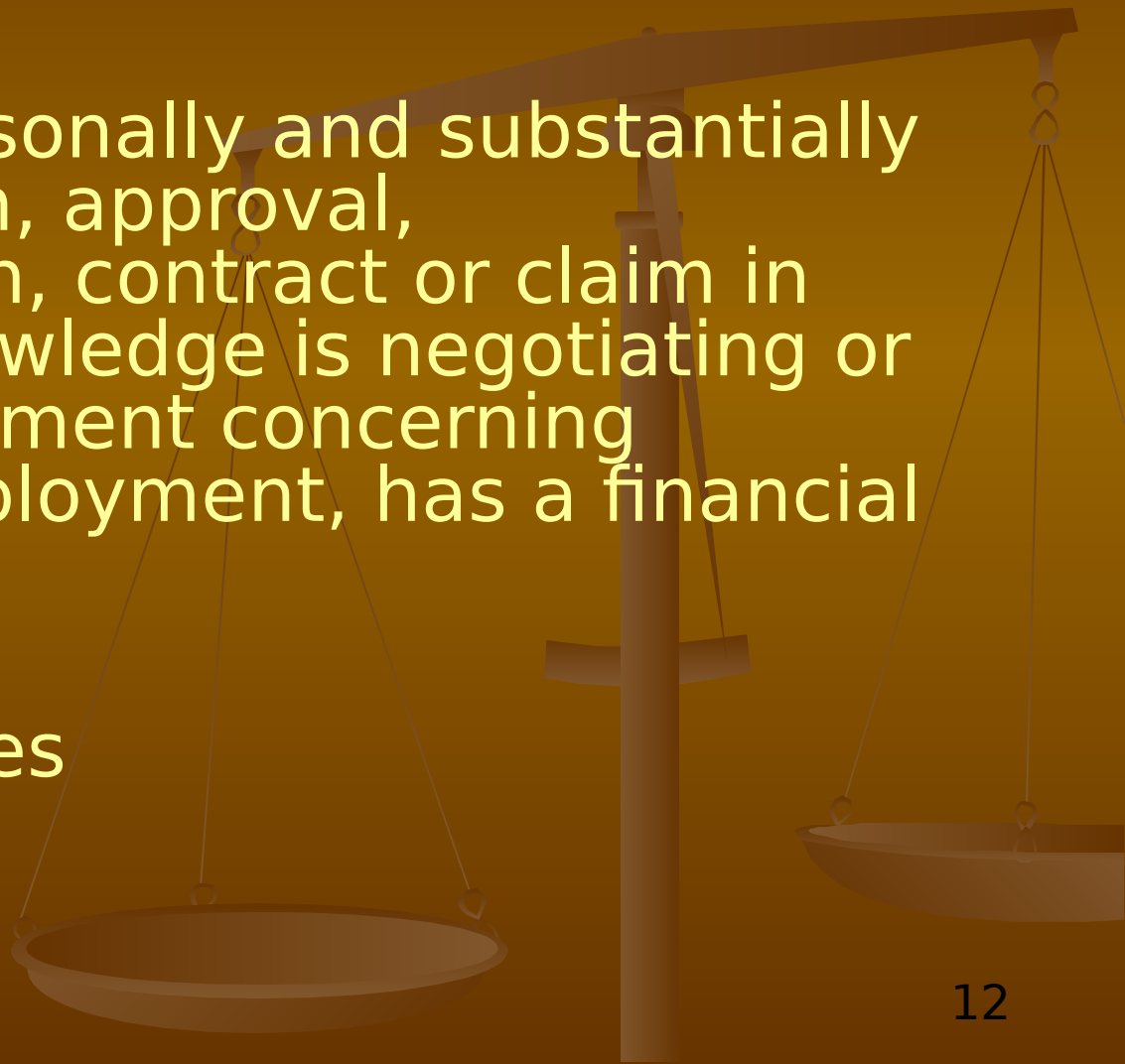
18 U.S.C. 208 (a)

- participates personally and substantially through decision, approval, recommendation, contract or claim in which to his knowledge is negotiating or has any arrangement concerning prospective employment, has a financial interest

- Criminal penalties



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Procurement Integrity Act, 41 U.S.C. 423
$10 Million Contract or More

- Procuring contracting officer, source selection authority/evaluation board, financial/technical evaluation team chief;
- Program manager, deputy program manager, administrative contracting officer;
- Personally made a decision to award, subcontract, modify, pay, or settle a claim

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Procurement Integrity Act, 41 U.S.C. 423

$10 Million Contract or More

- May not accept compensation from the contractor or party who received the payment, for a period of 1 year from the date when the action occurred.
- Restriction does not apply to another division/affiliate of the contractor not producing the same/similar product or services.

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Procurement Integrity Act, 41 U.S.C. 423

Criminal Penalties

- 5 years imprisonment

Civil Penalties

- $100,000 Fine for individuals
- $1,000,000 Fine for corporations

Other Actions

- Disciplinary Action
- Void/Rescind Suspension/Debarment
- Terminate For Default

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Druyun Case

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Druyun Case

- Former senior Air Force official retired Nov 2002 and became the VP and Deputy General Manager of Boeing's Missile Defense System Jan 2003.
- DoD Inspector General investigated allegations of providing Boeing employees access to competitor's data during procurement negotiations.

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Druyun Case

- As a result Boeing conducted its own internal investigation which revealed employment discussions took place before disqualification by the AF official.
- Boeing CFO and former AF official fired Nov 2003 for violating company hiring practices.

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Druyun Case

- DoD expanded the IG investigation to include other procurements and possible recruitment/hiring conflict of interests violations.
- Former AF official plead guilty to conspiracy to violate 18 U.S.C. 208(a) in the Eastern District of Virginia.

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Druyun Case

Acknowledges favoring Boeing in certain negotiations.

- Agreed to a higher price for tanker aircraft than she believed to be appropriate.
- Provided proprietary pricing data supplied by another aircraft manufacturer.

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Druyun Case

- $100 million settlement of the restructuring program believing a lower amount as more appropriate.
- Selected Boeing over four competitors for over $4 billion avionics upgrades, believing that an objective selection authority would have selected differently.
- $412 million settlement on the C-17 H22 contract while seeking employment for her future son-in-law.

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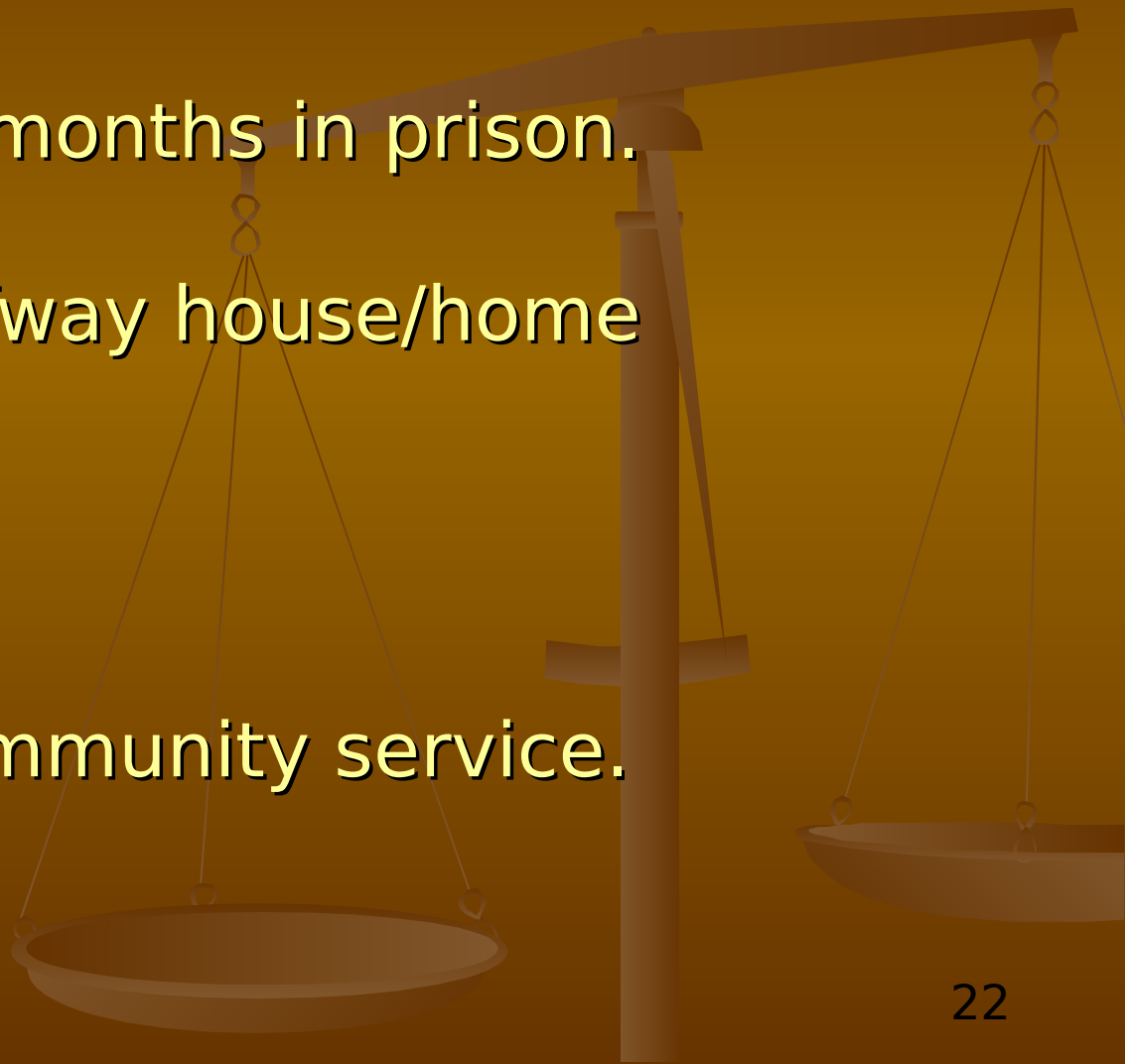
Druyun Case

- Sentenced to 9 months in prison.
- 7 months in halfway house/home detention.
- Fined $5,000.
- 150 hours of community service.



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Ethics Principles compromised:

- Public Service is a public trust.
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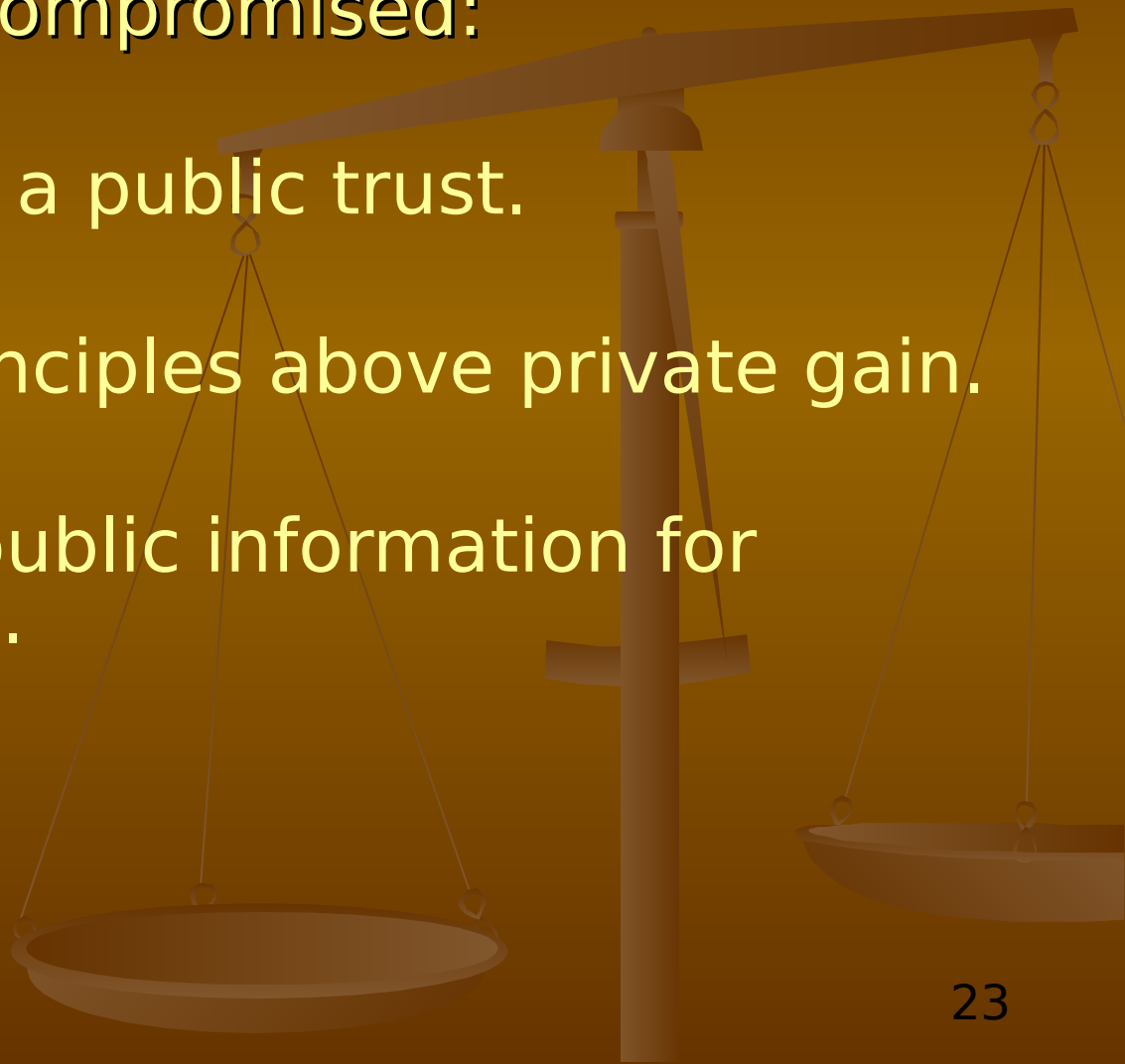

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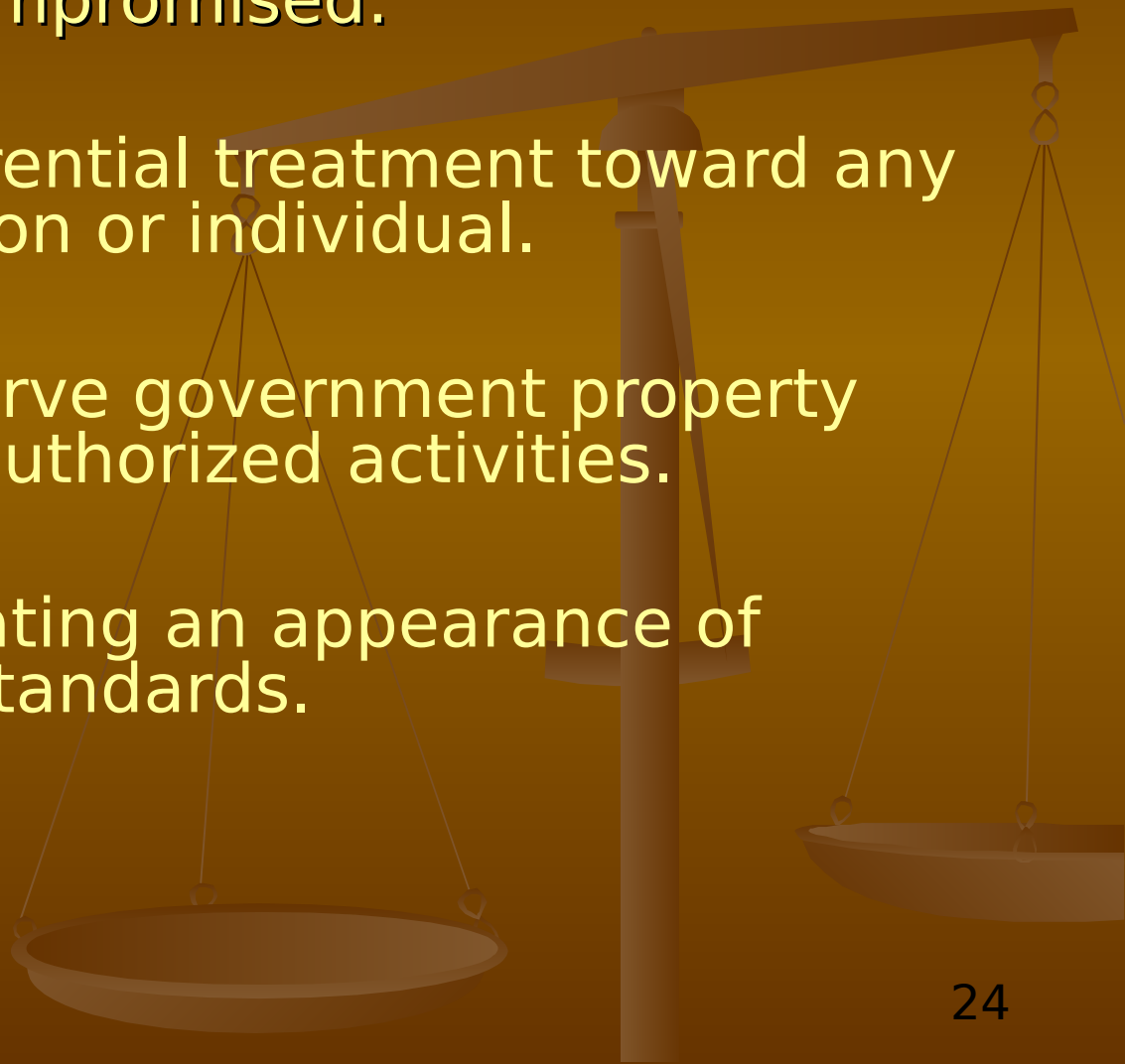

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Lessons Learned:

- Significant penalties for violations of the criminal conflict of interests statutes.
- Disqualification should happen early in the employment process. Pay differential not worth the RISK.
- Under an obligation to refer for criminal investigation. NOT MUCH CHOICE.
- Results in bid protests by other defense contractors to GAO.
- Additional costs to the Government. (GAO sustained Lockheed's protest resulting in attorney's fees and filing costs.)
- May result in new competition for the same requirement.

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Michael W. Wynne,

Acting Under Secretary of Defense , Acquisition, Technology, and Logistics

- Ethics and integrity are the backbone of our business and acquisition activities.
- Task Force will examine acquisition authority and checks/balances to protect integrity of decisions.
- Eight contract actions executed during Druyun's tenure forwarded to DoD IG.
- Other defense contractor protests reviewed by GAO based upon Druyun's plea agreement.
- Everyone's effort to fully restore public trust, insist on the highest integrity from industry and remain vigilant .

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Ripple Effects:

- Congress revisiting the revolving door laws advocating more stringent rules.
- Increased GAO/OGE audits focusing on post government employment training, tracking, enforcement, and accountability.
- Nominations, confirmations, and tanker deal held up.

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Use of Government Resources
Protect and Conserve

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Use of Government Resources
Protect and Conserve

- Official and Authorized purposes only
- Communication Systems include computers, telephones, email, internet
- Cell phone use (change to Army policy)

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Use of Government Resources Protect and Conserve

Types of Uses of Government Resources

<u>Official Uses.</u>

- Essential to mission completion.
- Formally recognized by regulation/statute.

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Use of Government Resources

Protect and Conserve

Types of Uses of Government Resources

<u>Authorized Uses.</u>

- Not official, but not prohibited.
- Approved limited personal use.
- Meets criteria for personal use.

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Use of Government Resources

Protect and Conserve

<u>Criteria for personal use.</u>

- Does not adversely affect the performance of official duties.
- Is of a reasonable duration/frequency, off duty.
- Serves a legitimate public interest.
- Creates no significant additional cost.

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Use of Government Resources

Protect and Conserve

<u>Prohibited Uses.</u>

- Crimes (theft, child porn, copyright)
- Commercial activities/personal financial gain (personal business).
- Violation of Establishment of Religion
- Political activities
- Interference with mission, reflects adversely

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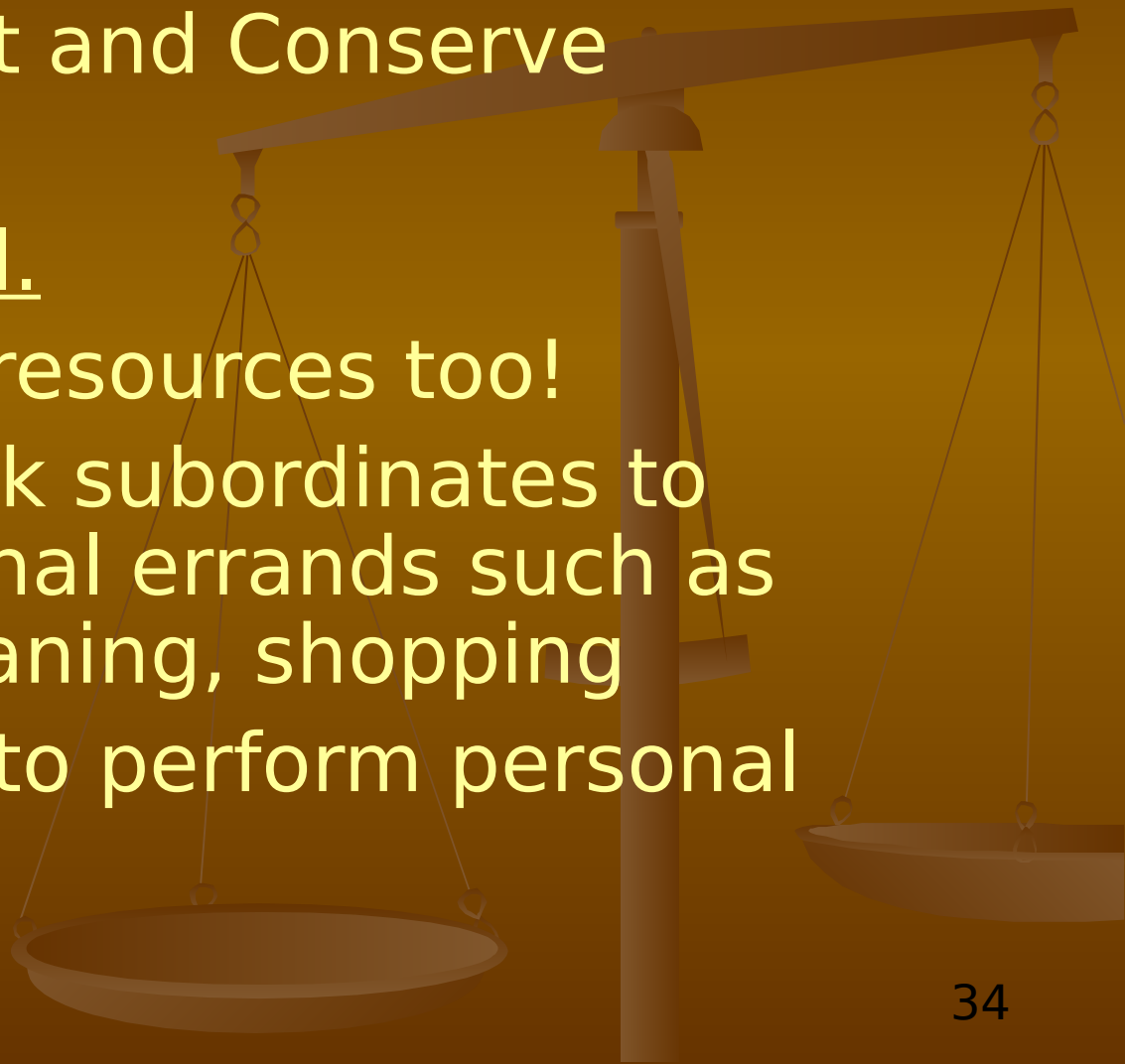
Use of Government Resources

Protect and Conserve



<u>Use of Personnel.</u>

- Personnel are resources too!
- Improper to ask subordinates to perform personal errands such as meals, dry cleaning, shopping
- Decline offers to perform personal services.

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Contractors in the Workplace

- Fundraising and Contractor Personnel
- Misuse of Contractor Personnel
- Solicitation of Gifts From Contractors
- Receiving Non-Public Information

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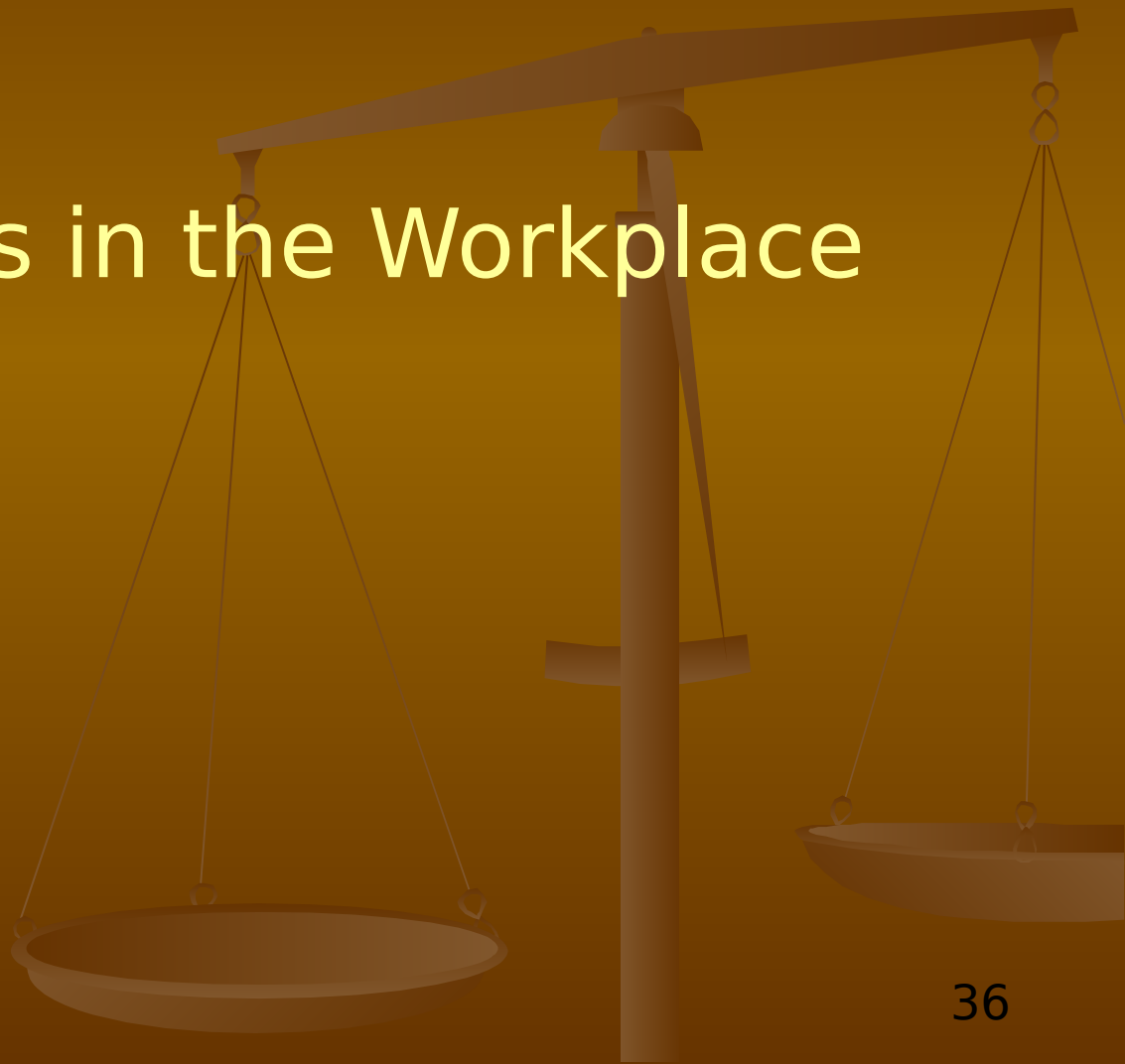
Contractors in the Workplace



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Contractors in the Workplace

Fundraising and Contractor Personnel

- Employees may fundraise among their own employees and funds used to benefit own employees.
- May not fundraise among contract personnel or use funds raised to benefit contract personnel participation in events.
- No solicitations for money or personal property.

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Contractors in the Workplace

<u>Misuse of Government Contractor Personnel</u>

- Prohibited from directing contract personnel to perform tasks other than those provided for in the contract.
- Improper to use contractor personnel for the same personal tasks which would be improper for government personnel.
- Improper use may result in an Anti-deficiency Act violation.

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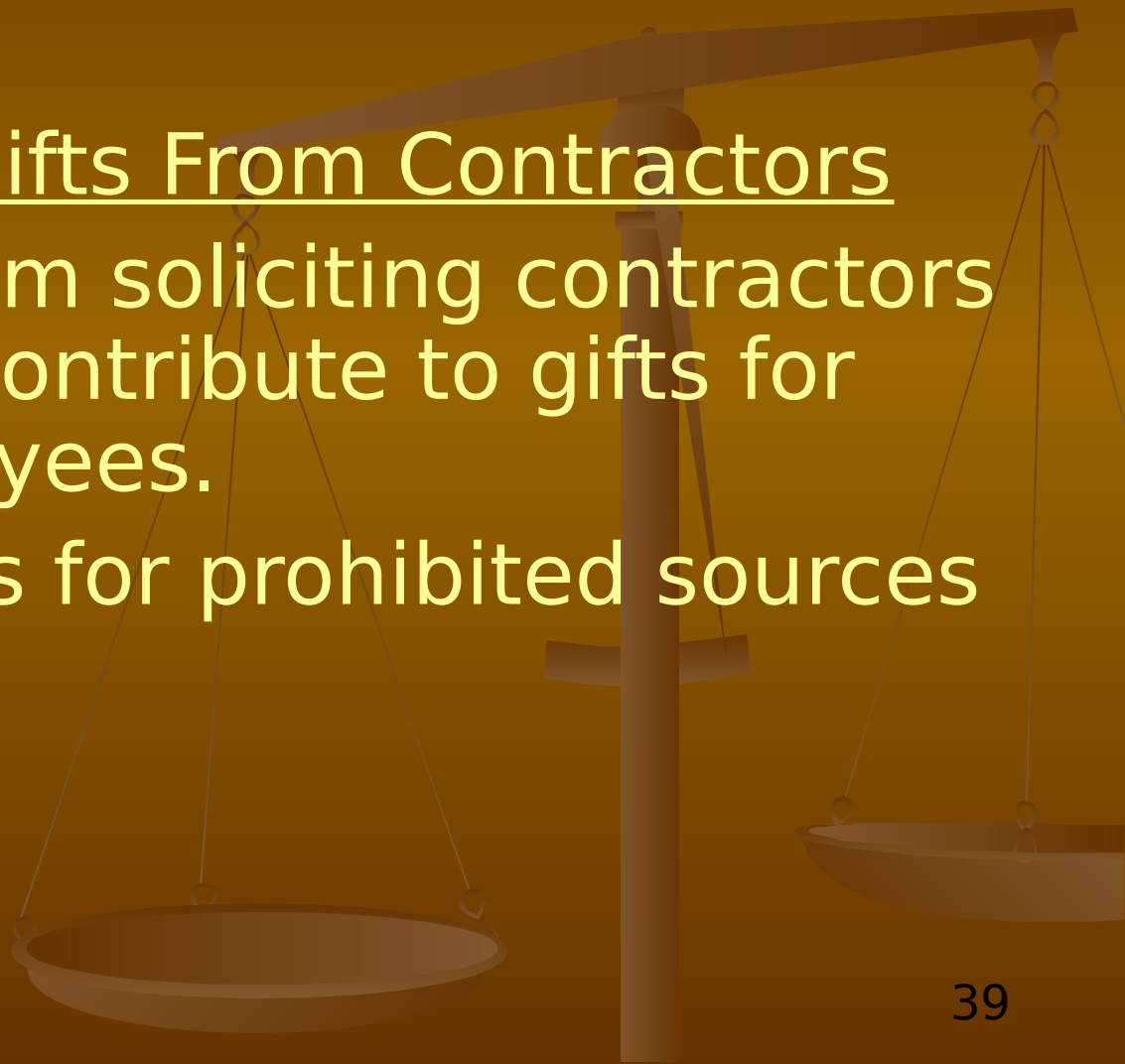
Contractors in the Workplace



Solicitation of Gifts From Contractors

- Prohibited from soliciting contractors to donate or contribute to gifts for federal employees.
- Gift limitations for prohibited sources apply.

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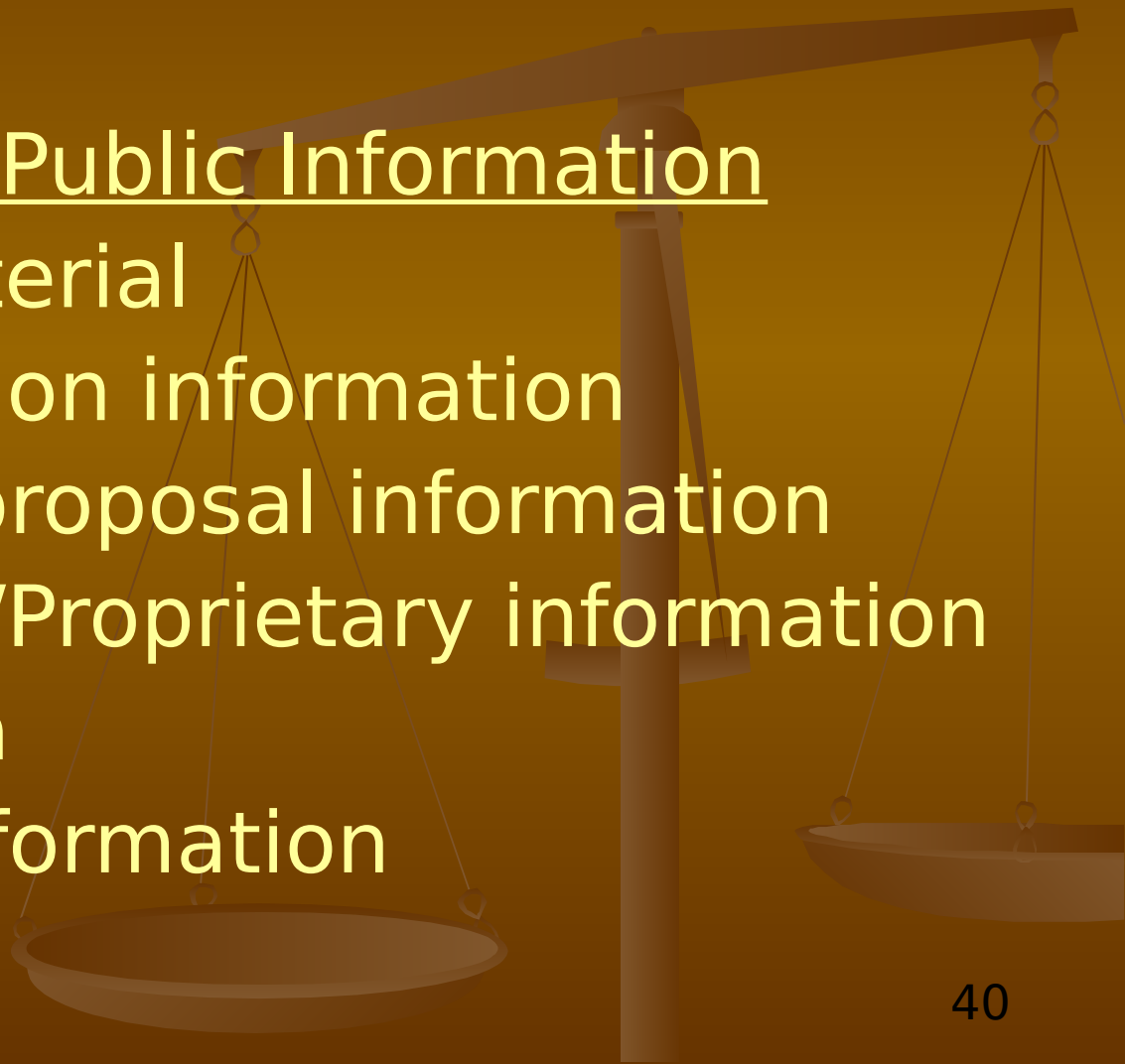
Contractors in the Workplace



Release of Non-Public Information

- Classified material
- Source Selection information
- Contract bid/proposal information
- Trade Secrets/Proprietary information
- Technical data
- Privacy Act information

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Contractors in the Workplace

<u>Release of Non-Public Information</u>

- May be subject to severe penalties.
- Privacy Act info disclosed for purposes of performing the contract.
- Law treats contractor employees who have access to Privacy Act information as Federal employees for purposes of sanctions.

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PRIVATE ORGANIZATIONS

GEN Richard A. Cody,
Vice Chief of Staff

- Senior leaders must take ownership of the ethics program in their commands and organizations.
- Ethics is not an area for “out of the box thinking.”
- Ethics statutes and regulations define the “box.”
- Senior leadership must learn and follow rules on relationships with ***every*** Private Organization.

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PRIVATE ORGANIZATIONS

- No management in an official capacity, but advisory only to represent DoD interests.
- No official endorsement including use of title, position, and organization.
- No support of membership/fundraising drives.

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PRIVATE ORGANIZATIONS

- May provide logistical support such as speakers or panel members on a limited basis. (JER 3-211 criteria)
- May co-sponsor only for civic/community activity or scientific, technical, or professional events. (OGC approval)

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PRIVATE ORGANIZATIONS

- May not use Army personnel to support activities of a Private Organization.
- May not support another Army employee in support of Private Organization activities.
- May not engage in official activities involving the Private Organization, if an active participant or officer in the Private Organization within the last year.

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PRIVATE ORGANIZATIONS

- May participate in a personal capacity, exclusively outside the scope of official duties.
- May become members and participate in personal capacity in management . (no use of title/position/organization)
- May use Government resources for official purposes only.

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Questions?